

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY BRASILIA IMMEDIATE

C O N F I D E N T I A L STATE 201446

C O R R E C T E D C O P Y (OMISSION OF TEXT PARA 2)

E.O. 11652: GDS

TAGS: PFOR, OAS, BR

SUBJECT: CUBAN SANCTIONS

REF: BRASILIA 6873

1. IN PARA TWO OF THE REFTEL MINISTER SOUTOMAIOR
RAISES THE QUESTION OF WHO SETS UP THE STUDY COMMITTEE, THE
OAS PERMANENT COUNCIL OR THE COUNCIL SPECIFICALLY CON-
VOKED AS THE PROVISIONAL ORGAN OF CONSULTATION UNDER
THE RIO TREATY.

2. IN THE TRIPARTITE DRAFT IT IS THE COUNCIL QUA COUNCIL
WHICH SETS UP THE FIVE-NATION STUDY COMMITTEE AS AN ELEMENT
OF CONVOKING AN MFM. CONVOCATION BY THE COUNCIL OF AN
ORGAN OF CONSULTATION REQUIRES ONLY AN ABSOLUTE MAJORITY
PER ARTICLES 16 AND 13 OF THE RIO TREATY. (AND THE COUNCIL,
AS SOUTAMAIOR POINTS OUT, ALSO HAS THE AUTHORITY TO ESTABLISH
A STUDY COMMITTEE BY MAJORITY VOTE.)

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3. IF THE COUNCIL WERE FIRST CONVOKED AS THE PROVISIONAL ORGAN OF CONSULTATION PRIOR TO SETTING UP THE COMMITTEE, IT WOULD POSE A DIFFERENT ISSUE. WHETHER IT WOULD THEN REQUIRE A MAJORITY OR A TWO-THIRDS VOTE TO SET UP THE COMMITTEE IS NOT ENTIRELY CLEAR. THE BETTER LEGAL VIEW, IN OUR JUDGMENT, IS THAT SETTING UP THE COMMITTEE WOULD BECOME QTE DECISION UNQTE UNDER ARTICLE 17 OF THE RIO TREATY, REQUIRING A TWO-THIRDS VOTE. (OTHERS MAY ARGUE DIFFERENTLY, CITING THE QTE ORGAN OF LIAISON UNQTE CLAUSE OF ARTICLE 15--WHERE ONLY A MAJORITY IS REQUIRED.)

4. WITH REGARD TO SOUTOMAIOR'S QUESTION IN PARA THREE REFTEL, IT SEEMS CLEAR THAT THE TERMS OF REFERENCE FOR AN ORGAN OF CONSULTATION MAY BE ESTABLISHED BY THE COUNCIL IN THE RESOLUTION OF CONVOCATION (E.G. THE LENGTHY TERMS OF REFERENCE IN THE COUNCIL RESOLUTION CONVOKING THE EIGHTH MFM). IT WOULD THUS BE VERY DIFFICULT TO ARGUE THAT TERMS OF REFERENCE MUST BE ESTABLISHED BY THE PROVISIONAL ORGAN OF CONSULTATION OR THAT THEY REQUIRE ANYTHING MORE THAN AN ABSOLUTE MAJORITY.

5. THESE ASPECTS OF THE VOTING ISSUE COULD BE MOOT. THERE MAY NOW BE 14 NATIONS (TWO-THIRDS) IN FAVOR OF THE GENERAL PROPOSITION THAT THE OAS EXAMINE THE ISSUE, WHETHER THE RESOLUTION AS DRAFTED HAS THAT MUCH SUPPORT IS OPEN TO QUESTION. WE KNOW URUGUAY, FOR ONE, IS THINKING OF AMENDMENTS. KISSINGER

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